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No. 1432

In the

Supreme Court of the United States

OCTOBER TERM, 1970

STAUGHTON LYND, et al.,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioners, Staughton Lynd and twenty-seven other individuals, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Illinois entered in the above case on December 4, 1970.

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 47 Ill.2d 205, 265 N.E.2d 116 (1970), and is set out in full as an appendix to this petition.

JURISDICTION

Petitioners were convicted and fined $500.00 each by judgments of the Circuit Court of Cook County, Munici-

pal Department, First Division, entered after a jury found the defendants guilty of violating Chapter 11, Section 33 of the Municipal Code of the City of Chicago,[1] by interfering with a police officer in the discharge of his duty. Upon timely consolidated appeal to the Supreme Court of Illinois, the convictions were affirmed. The judgment of the Supreme Court of Illinois was entered on December 4, 1970. A motion dated December 21, 1970 for stay of the mandate of the Supreme Court of Illinois pending application for a writ of certiorari was granted on December 28, 1970, and the petition for certiorari was filed within 90 days of the entry of the judgment of the Supreme Court of Illinois. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether peaceful conduct conceded by the court below to have been protected by the First Amendment can be made criminally punishable by the interposition of a police order to cease such conduct absent any showing of governmental interest justifying such order.

2. Whether convictions devoid of evidentiary support are invalid under the Due Process Clause of the Fourteenth Amendment.

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[1] Section 11-33 provides:

a) Any person who knowingly shall resist or obstruct the performance by one known to the person to be a peace officer of any authorized act within his official capacity or shall knowingly interfere or prevent a peace officer from discharging his duty as such officer and whoever shall in any manner knowingly assist any person in the custody of any member of the police department to escape or attempt to escape from such custody, shall be fined not less than $25.00 nor more than $500.00.

b) For the purpose of this section "resist" shall mean passive as well as active resistance.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution
Fourteenth Amendment, Section 1

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The facts in the present case are undisputed. On Tuesday, August 27, 1968, two to three hundred persons, having previously notified the Chicago police of their intentions (R. 453[2]) and following the directions of the police as to the manner of the march and the route to be followed (R. 502-03, 521), walked from a church in downtown Chicago some six miles to the Chicago International Amphitheatre, the site of the 1968 Democratic National Convention, there to picket for the purpose of expressing their sorrow over the violence and

[2] References to the certified record filed herewith are designated "R.", and materials appended to this petition will be identified by "A." before the page numbers.

suppression of human rights in Chicago, Viet Nam and Czechoslovakia. (R. 435.) They proceeded to 39th Street and Halsted Street by 4:00 p.m., where they were met by John Hartnett, Deputy Chief of the Fourth Area Patrol Division, in charge of external security around the Amphitheatre. (R. 39-40.)

Chief Hartnett testified that barricades had been erected on Halsted at 39th Street and that Halsted, the street which runs behind the Amphitheatre, was closed to 47th Street in preparation for the opening of the 6:00 p.m. session of the Convention. (R. 45.) Hartnett told the defendants that they would be allowed to picket on Halsted at other times, and the group agreed to move several blocks west to an open area at 39th and Morgan. (R. 49, 114-15.) There they held a silent vigil throughout the night, their number dwindling to 10 or 15 at times.

At approximately 4:00 a.m. on Wednesday, August 28th, the remaining marchers moved over to Halsted Street, which had been reopened following the end of the Tuesday night session, between 42nd and 43rd Streets, directly behind the Amphitheatre. (R. 53.) They picketed silently in a single file, marching in an oval (R. 66) on the outside half of the sidewalk on the east side of Halsted. Halsted is six lanes wide at the site of the picketing, and the east side is occupied by small businesses with flats above. (R. 118-19.) The main entrance to the Convention was around the other side of the Amphitheatre, and no delegates to the convention used the Halsted Street entrances, which were closed and secured. (R. 117-19.) By 8:00 a.m. there were twenty-five persons marching (R. 53), and Chief Hartnett testified: "The pickets were peaceful, they were

orderly, they were not blocking pedestrian traffic or vehicles. There was no need to take any action." (R. 54.) By 9:45 a.m. there were approximately sixty persons in the picket line. (R. 56, 197.)

Chief Hartnett gave orders that Halsted Street should be closed at 10:00 a.m., two hours in advance of the next session of the Convention. (R. 56.) He testified that the decision to close Halsted Street had been reached at meetings held during the Summer of 1968 and attended by representatives of the Secret Service, the National Guard, the Army, the Chicago Police Department, the Department of Streets and Sanitation and various utility companies. (R. 87, 89-90.) Chief Hartnett was placed in charge of external security including erection of traffic barricades (R. 92). He testified that his concern was with traffic control and the safety of the Convention delegates. (R. 95.) The order to close Halsted Street was given to Hartnett orally by his superior officer after the final meeting preceding the opening of the Convention. (R. 106, 130.) The Deputy Commissioner of the Department of Streets and Sanitation testified for the City that the barricades were erected well in advance of each session of the Convention in order to allow time to effect traffic detours and special routes. (R. 327, 328, 330.)

By 10:15 a.m. August 27th, "all traffic was stopped and the area was cleared." (R. 61.) However, some businesses on Halsted Street remained open, and persons with business to conduct and deliverymen were allowed to cross the barricades. (R. 128, 224.) "Special exceptions" (R. 128) were made, and welfare clients seeking to enter a welfare office on Halsted Street, considered "hardship" cases by the police, were permitted to do so. (R. 175.) Chief Hartnett testified that he believed he

had authority to close down Halsted Street all night if he had thought it was reasonable to do so. (R. 172.)

At approximately 10:15 a.m. Chief Hartnett and Commander Pepp approached the picketers. (R. 61.) Hartnett testified that prior to this time he considered that no law had been broken by any of the picketers. (R. 137.) All witnesses agreed that the marchers were at all times orderly and peaceful, and the assistant corporation counsel so stipulated at trial. (R. 125.) The marchers were ordered to disperse and leave the area or face arrest for interfering with the order to close the street. About half left. (R. 63.) The remaining thirty-one persons, twenty-two men and nine women, continued to march silently. (R. 125.) After additional warnings, the thirty-one marchers were each touched on the arm and they stepped into waiting police vans and were taken to the lockup.

HOW FEDERAL QUESTIONS ARE PRESENTED

The trial court instructed the jury that in order to find that each petitioner did "knowingly interfere or prevent a peace officer from discharging his duty" the jury must find that he "engages in some physical act or exertion that substantially impedes the performance of the peace officer's duty" (R. 641) and not that he "innocently interferes by inaction or speech." (R. 640.) Nevertheless, the jury returned verdicts of guilty against the petitioners on the uncontested facts set out above. On appeal to the Supreme Court of Illinois petitioners urged that their peaceful conduct was protected by the First and Fourteenth Amendments of the United States Constitution and that they could not be convicted of interfering with a policeman in the discharge of his duty

for the mere failure to leave the area in the absence of any showing of valid governmental interests requiring that they do so. Petitioners also contended that their conviction for knowingly interfering, as defined by the trial court, was a violation of due process for the reason that it was utterly devoid of any evidentiary support.

The Supreme Court of Illinois affirmed the judgment of the Circuit Court on December 4, 1970. Although finding that the conduct of the group was at all times peaceful and orderly and the sidewalk was not blocked (A. 2a), and recognizing the decisions of this Court establishing that orderly demonstrations are protected by the First Amendment (A. 3a), the Supreme Court of Illinois went on to hold that the protected character of the petitioners' conduct was "irrelevant" in light of the professed interest of the government in providing for the safety of the delegates to the Convention and maintaining the free flow of traffic to and from the Amphitheatre. (A. 4a.) The Court further found that since the order was reasonable, petitioners' refusal to leave in compliance with the order constituted interference with the duty to clear the area.

REASONS FOR GRANTING THE WRIT

I. Peaceful Conduct Conceded by the Supreme Court of Illinois to Have Been Protected by the First Amendment Cannot Be Made Criminally Punishable by the Mere Interposition of a Police Order to Cease Such Conduct Absent Some Showing of Governmental Interest Justifying Such Order.

It is no longer subject to doubt that peaceful and orderly protest on the public streets and sidewalks is "well within the sphere of conduct protected by the First Amendment." *Gregory* v. *City of Chicago,* 394 U.S. 111, 112 (1969); *Amalgamated Food Employees* v. *Logan Valley Plaza,* 391 U.S. 308, 313 (1968). And although the First Amendment does not afford the same kind of freedom to the communication of ideas by conduct as by "pure speech", *Cox* v. *Louisiana,* 379 U.S. 536, 555 (1965), where First Amendment rights are involved, governmental regulation is permitted only if it furthers an important or substantial governmental interest, is unrelated to the suppression of free expression, and is no greater than is essential to the furtherance of that interest. *United States* v. *O'Brien,* 391 U.S. 367, 377 (1968).

The Supreme Court of Illinois recognized in its opinion (A. 2a) that the petitioners' conduct was at all times peaceful and orderly and that the sidewalk was not blocked nor traffic obstructed. The petitioners clearly could not have been charged with disorderly conduct, *Gregory* v. *City of Chicago,* 394 U.S. 111 (1969), breach of the peace, *Cox* v. *Louisiana,* 379 U.S. 536 (1965); *Edwards* v. *South Carolina,* 372 U.S. 229 (1963), trespass, *Adderly* v. *Florida,* 385 U.S. 39 (1966), obstructing traffic, or blocking the sidewalk.

The record is also clear that no narrowly drawn statute prohibiting picketing at the site of the Convention existed. In fact, the Illinois General Assembly, in response to this Court's holding in the *Gregory* case, had passed a statute directed to residential picketing which specifically *excepted* persons peacefully picketing "the place of holding a meeting or assembly on premises commonly used to discuss subjects of general public interest," (Ill. Rev. Stat. ch. 38 §21.1-2), thus preserving the very activity for which these petitioners have been convicted and fined $500.00 apiece. In the absence of a narrowly drawn statute, the police relied in the present case on an oral order to close off the streets surrounding the Amphitheatre and enforced this order by resort to an ordinance prohibiting interference with the lawful order of a police officer.

Thus, after the petitioners had marched silently in a circle for some six hours, suddenly at 10:15 a.m., the ranking police officer at the scene ordered the marchers to disperse and effected the arrest, without resistance (R. 125), of those who failed to leave for interfering with the police in their self-appointed duty to clear the already-barricaded and deserted street. To paraphrase *Gregory*:

> Their guilt . . . turns out to be their refusal to obey instantly a policeman's individual command to leave the area . . . . Since neither the city council nor the state legislature had enacted a narrowly drawn statute forbidding [picketing the Amphitheatre], the conduct involved here could become 'disorderly' only if a policeman's command was a law which the petitioners were bound to obey at their peril. 394 U.S. 111, 113 (1969) (Black, J., concurring).

As was said in *Cantwell* v. *Connecticut*, 310 U.S. 296, 311 (1940):

> [I]n the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question. (Footnotes omitted.)

The reliance upon a supposed police "duty" to clear the area of the Amphitheatre of all signs of life in order to insulate the Democratic Convention from all contact, real or symbolic, with the outside world, and the use of criminal sanctions for interfering with an officer in the discharge of his duties is a patent subterfuge designed to escape the restrictions on the power of the police to suspend the rights of peaceful demonstrators to assemble and petition their government for redress of grievances.

Although there are a few decided cases specifically involving "interference" ordinances, many First Amendment breach of the peace cases have involved statutes making refusal to disperse upon the order of a police officer a breach of the peace.

Thus, the 2,000 demonstrators in *Cox* v. *Louisiana*, 379 U.S. 536 (1965), could not be convicted of a breach of the peace for failure or refusal to move on even after the delivery of an "inflammatory speech" by their leader. See also *Brown* v. *Louisiana*, 383 U.S. 131 (1966). And pedestrians peacefully assembled on a downtown sidewalk who refused to disperse upon the order of a policeman could not constitutionally be convicted of a breach

of the peace for failure to obey a request to move on. *Shuttlesworth* v. *City of Birmingham,* 382 U.S. 87 (1965). Peaceful, nonobstructive conduct cannot be escalated into a breach of the peace by the simple expedient of first ordering the citizens to move on. How then can the same conduct be deprived of its protected character by the mere renaming of the offense to focus on the policeman's command rather than the demonstrator's lawful conduct? For, "it is the character of the right, not of the limitation, which determines which standard governs the choice" between the individual's rights and the State's police power. *Thomas* v. *Collins,* 323 U.S. 516, 529-530 (1945).

Both the City of Chicago and the Supreme Court of Illinois seek to justify this prosecution by a showing that the order to close Halsted Street was for the safety of convention delegates and to reroute traffic and that the order was not directed at the petitioners' conduct. (A. 4a.) The respondent asserted in its brief below that "It is unlikely that the convention planners would make so much trouble for themselves [closing Halsted Street] merely to spare the delegates the sight of some picketers." How, then, did petitioners' conduct—a silent march several blocks from the delegates' entrance and on an already closed-down street—constitute interference with the duties of the police? Only by virtue of the on-the-spot decision to interpret the closing order to include the sidewalks, thus converting a traffic plan into a selective evacuation and quarantine, did any "duty" arise, and solely on the basis of this "duty" were petitioners ordered to leave the area and arrested for their failure to do so. This is the message of *Hamer* v. *Musselwhite,* 376 F.2d 479 (5th Cir. 1967), where the court saved an ordinance which prohibited demonstrations on the streets leading to the seat of government by interpreting it to permit

demonstrations on the sidewalks. The order here was not only discriminatory in that residents, deliverymen, and welfare recipients were permitted on Halsted Street, but also overbroad in its application to petitioners, whose presence bore no relation to the governmental interests supposed to be present.

Here the officer in charge testified that no emergency was created by the petitioners. He said it was "not a local emergency but a nationwide condition" (R. 185) which led him to demand that the marchers disperse and forgo their right to picket. The Supreme Court of Illinois accepted the respondent's invitation to substitute, sub silentio, judicial notice of such supposed general conditions for any showing of facts justifying suppression of these petitioners' activities under the circumstances at the time of their arrest. Such a procedure is tantamount to a presumption *against* petitioners' protected activity, subjects them to criminal prosecution without opportunity to challenge the factual assumptions of the court, and constitutes a violation of due process. *Garner* v. *Louisiana,* 368 U.S. 157, 173 (1961).

II. Petitioners' Convictions, Not Supported by the Record, Violate Due Process.

The trial court instructed the jury that to convict petitioners they had to find that each petitioner engaged in some "physical act or exertion" that substantially impeded the performance of a policeman's duty. (R. 641.) By way of contrast, the trial court further instructed the jury that conviction could not be based on a finding that each petitioner engaged in mere inaction or speech. (R. 260.) Despite the fact that there was no evidence tending to show that petitioners engaged in some "physical act

or exertion," and abundant evidence which negated such a conclusion, the jury returned a guilty verdict. Under such circumstances, the due process standards developed by this Court in *Thompson* v. *City of Louisville,* 362 U.S. 199 (1960), and *Gregory* v. *City of Chicago,* 394 U.S. 111 (1969), require that these convictions, devoid of evidentiary support, be reversed.

Not only is there no evidence that petitioners engaged in behavior that constituted the requisite "physical act or exertion", but, as indicated, the record is replete with statements and stipulations that are in direct conflict with such a conclusion. The City's first witness, John Hartnett, Deputy Chief of the Chicago Police Department, testified that there were "no disorders or emergencies" that arose in connection with the petitioners' march. (R. 123.) Another police officer testified that petitioners were "peaceful" and "didn't do anything to attract [his] attention as being unlawful." (R. 214.) The consensus of the prosecutor's witnesses led him to state: "[F]or the record, the City will stipulate that at all times these people were peaceful." (R. 125.)

In light of the foregoing testimony, the jury could not have found that petitioners were guilty of engaging in activity amounting to "physical act," "exertion," or "interference." Yet, the jury did just that. The lack of evidentiary support for this verdict is, by itself, sufficient reason for reversal. *Thompson* v. *City of Louisville,* 362 U.S. 199 (1960).

Despite petitioners' efforts to raise their due process contention before the Illinois Supreme Court, that court summarily determined the argument to be "without merit." (A. 5a.) The Illinois Supreme Court's opinion offers no explanation or reference to facts which support a con-

viction on the instructions given by the trial court, concluding merely that since the police order was "reasonable" the petitioners' refusal to leave constituted intereference. Such casual disregard of petitioners' rights to be tried upon the facts and the law as instructed by the trial court denies them due process of law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX

Opinion of the Supreme Court of Illinois

City of Chicago, a Municipal Corporation,
Plaintiff-Appellee,
v.
Staughton Lynd, et al.,
Defendants-Appellants.

Appeal from Circuit Court Cook County

No. 42495

MR. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

After a jury trial in the Cook County circuit court, defendants were found guilty of interfering with a police officer in the performance of his duties under section 11—33 of the Municipal Code of Chicago. Each was fined $500. A constitutional question gives us jurisdiction. Supreme Court Rule 603.43 Ill.2d R 603.

The relevant facts are undisputed. On Tuesday, August 27, 1968, 200-300 marchers, including defendants, walked from a church at Wabash Avenue and Huron Street to the Chicago International Amphitheatre where the 1968 Democratic National Convention was then being held. The group had previously advised the Chicago Police Department of their intention to march and were accompanied by police officers who showed them the route. When the marchers arrived at 39th and Halsted streets, they were informed by Deputy Police Chief Hartnett that Halsted Street had been closed from 39th Street to 47th Street in preparation for the beginning of the next session of the convention. This

closing was pursuant to a plan developed in the weeks preceding the convention by the heads of various governmental agencies, including the Chicago Police and Fire Departments, the Secret Service, the National Guard, the Army, and the Department of Streets and Sanitation. Special security procedures and traffic regulations were set up to control the traffic to and from the amphitheatre and to protect the delegates, reporters and spectators attending the convention. As part of this plan, Halsted Street, immediately adjacent to the amphitheatre on the east, was to be closed to vehicular and pedestrian traffic approximately two hours before each session of the convention, during the sessions and for such period following the sessions as required for such traffic to dissipate.

The marchers agreed to move a few blocks west to an open area where they remained throughout the night, their numbers declining at times to ten or fifteen. At about 4:00 A.M., August 28, the remaining marchers moved back to Halsted Street which had been re-opened following the end of the Tuesday evening session. They formed a picket line on the east side of Halsted Street and marched single-file. The conduct of the group was at all times peaceful and orderly. The sidewalk was not blocked.

At 10:00 A.M., Chief Harnett ordered the closing of Halsted Street in preparation for the next session at noon. Traffic was rerouted and the street was cleared of pedestrians. The marchers, now approximately 60 strong, were the only ones remaining at 10:15 when they were told to disperse and leave the area or face arrest. This announcement was made two or three times using an electric bullhorn and some members of the group were told individually to leave. At this time, about one half of the marchers left, and 31 persons continued to picket. After additional warnings, those who remained were arrested without resistance.

Section 11—33 of the Municipal Code of Chicago provides in pertinent part: "a) Any person who knowingly shall resist or obstruct the performance of one known to the person to be a peace officer of any authorized act with-

in his official capacity or shall knowingly interfere or prevent a peace officer from discharging his duty as such officer * * * shall be fined not less than $25.00 nor more than $500.00."

The primary issue presented is whether the officers' act or duty, which defendants were convicted of obstructing, was constitutionally permissible insofar as it may have restricted the exercise of their first amendment rights of speech and assembly. Picketing and marching, if peaceful and orderly, are entitled to first amendment protection as methods of expression. (*Gregory* v. *City of Chicago,* 394 U.S. 111, 112, 22 L. Ed. 2d 134, 89 S. Ct. 946, *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147, 22 L. Ed. 2d 162, 89 S. Ct. 935.) However, "the First and Fourteenth Amendments [do not] afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech" (*Cox* v. *Louisiana,* 379 U.S. 536, 555, 13 L. Ed. 2d 471, 484, 85 S. Ct. 453; *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147, 22 L. Ed. 2d 162, 89 S. Ct. 935.) "[W]hen 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech elements can justify incidental limitations on First Amendment freedoms." (*United States* v. *O'Brien,* 391 U.S. 367, 376, 20 L. Ed. 2d 672, 679, 88 S. Ct. 1673.) The Supreme Court has held that where first amendment rights are involved, governmental regulation is permitted only if it furthers an important or substantial governmental interest, is unrelated to the suppression of free expression, and is no greater than is essential to the furtherance of that interest. *United States* v. *O'Brien,* 391 U.S. 367, 20 L. Ed. 2d 672, 88 S. Ct. 1673.

Two substantial governmental interests are here apparent: (1) adequate provision for the safety of the delegates and others who had gathered for the convention and (2) maintenance of the free flow of traffic to and from the

amphitheatre. Defendants' basic position is that the order closing the sidewalk along the east side of Halsted Street was not reasonably necessary to the furtherance of these interests because defendants' conduct posed no threat of violence or disorder, and the free flow of traffic was not obstructed. The peaceful and orderly character of the demonstration is, in our judgment, irrelevant since the police order was not directed at the defendants' conduct and the street would have been closed at 10:00 A.M. whether or not these particular individuals were present. In this respect, the instant case differs from those cases in which the arrest of demonstrators was motivated by the disorderly nature or effect of their activities. See, *e.g., Gregory* v. *City of Chicago,* 394 U.S. 111, 22 L. Ed. 2d 134, 89 S. Ct. 946; *Adderley* v. *Florida,* 385 U.S. 39, 17 L. Ed. 2d 149, 87 S. Ct. 242; *Shuttlesworth* v. *City of Birmingham,* 382 U.S. 87, 15 L. Ed. 2d 176, 86 S. Ct. 211; *Cox* v. *Louisiana,* 379 U.S. 536, 13 L. Ed. 2d 471, 85 S. Ct. 453; *Edwards* v. *South Carolina,* 372 U.S. 229, 9 L. Ed. 2d 697, 83 S. Ct. 680; *People* v. *Meyer,* 44 Ill.2d 1; *City of Chicago* v. *Joyce,* 38 Ill.2d 368.

The testimony of those attending the preconvention planning sessions reveals that the establishment of a "secured area" directly behind the amphitheatre, including Halsted Street and the sidewalks along that street, was deemed an essential element in the overall plan to provide safe and expeditious access to the convention. In view of the obvious difficulties involved in policing this extraordinary event, including the optimum deployment of a limited number of police officers for security and traffic control, we find the order in question manifestly reasonable and necessary to further substantial governmental interests.

It is also clear from the record that the decision to close Halsted Street was not motivated by a desire to suppress free expression by these defendants or any other group. The decision as to the time and place of closing had been made before defendants had decided to march, and was dictated solely by the timing and location of the conven-

tion. Peaceful demonstrations were permitted at other times and places and defendants' march at this particular place was undisturbed for approximately six hours prior to the 10:00 A.M. closing on August 28.

Defendants contend further that the application of the police order to close was discriminatory. This contention is based on the fact that "special exceptions" were made which allowed local residents to proceed to their homes, welfare recipients to pick up checks from a welfare office on Halsted, and deliverymen to make deliveries to some of the neighborhood stores. These exceptions were made to prevent undue hardship and unreasonable interference with normal neighborhood activities and were manifestly reasonable and non-discriminatory.

Defendants allege that police discretion under the closing plan was impermissibly broad. The testimony of Deputy Chief Hartnett establishes that approximately 1½ to 2 hours were required to barricade Halsted Street and reroute traffic in preparation for the start of a convention session. After the street had been closed on the morning of August 28, defendants were the only ones who refused to leave. The order to move on and the subsequent arrest involved no abuse of discretion. Those persons obstructing the police officers' lawful duty to clear the street were uniformly arrested.

Finally, defendants argue that their convictions are not supported by the record because the verbal order was not lawful and there was no evidence of interference. This contention is without merit, for obedience to a policeman's verbal order is no less necessary simply because it is oral and not explicitly stated in statute or ordinance. Since we have previously found the police order to be reasonable under the existing circumstances, defendants' refusal to leave in compliance with that order undeniably interfered with the police officers' duty to clear the area.

The judgment of the Cook County circuit court is accordingly affirmed.

Judgment affirmed.

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OCTOBER TERM, 1970.

No. 1432

STAUGHTON LYND, ET AL.,
Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1432

STAUGHTON LYND, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

QUESTIONS PRESENTED.

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1. Whether the decision to close the street adjacent to the convention site for purposes of security and traffic was in consideration of a substantial governmental interest; whether the first amendment justified petitioners' refusal to follow the order enforcing that decision.
2. Whether non-violent refusal to leave the street constituted interference with police duty to close the street.

REASONS FOR DENYING THE WRIT.

I.

A SUBSTANTIAL GOVERNMENTAL INTEREST COMPELLED THE CLOSING OF THE STREET; THE CLOSING WAS NOT INTENDED TO LIMIT FREEDOM OF EXPRESSION.

The police order closing the street two hours before each session of the national convention was a valid one. Its narrow compass was in accord with the limits expressed in *United States* v. *O'Brien*, 391 U. S. 367, 377 (1968): Where first amendment rights are involved, governmental regulation is permitted only if it (A) furthers an important or substantial governmental interest, (B) is unrelated to the suppression of freedom of expression, and (C) is no greater than is essential to the furtherance of that interest.

A. The substantial governmental interest in securing the area adjacent to the site of the convention was recognized in the opi on of the Illinois Supreme Court. The regulation closing Halsted Street, the street adjacent to the Amphitheatre, was intended to provide safety for the delegates who had gathered to select the presidential candidate and for the spectators and press who had come to observe the proceedings. Closing the street was also intended to maintain the free flow of traffic to and from the sessions at the Amphitheatre with the least possible disruption to the neighborhood (R. 95, 318-25).

B. The order was unrelated to the suppression of free expression. The Deputy Chief of Police who was in charge of convention security testified that the decision was not an *ad hoc* one. It was not formulated in response to

petitioners' march. Preparations for handling the convention were promulgated in meetings beginnning more than a month before the opening of the convention (R. 86-90). He testified that his main concern, and that of the other security officers participating in the planning, was for the safety of the convention; limitation of expression did not enter their discussion and it was not the purpose of the order closing the street. Moreover, the decision was reached before the police had any knowledge of the march, and, in fact, before the marchers, themselves, had planned such a march (R. 97-106). (The final decisions regarding convention security were reached Friday, August 23. It was not until the following Sunday or Monday (R. 434-5, 494-99), however, that the group decided to march. Meanwhile, the two-hour closing had been observed from the time of the beginning of the convention.) That the closing was not aimed at the marchers is also indicated by the fact that it had put into effect regardless of whether marchers were present. Thus, Tuesday, the evening before the arrests, the marchers arrived at the vicinity of the Amphitheatre and found Halsted Street closed because the evening session of the convention was about to begin. At that time they were informed of the two-hour closing plan and marched to an area a short distance away to await the reopening of the street following the session (R. 455, 469-70, 514, 525). The regulation was, then, uniformly applied, and not for the purpose of limiting expression.

C. The regulation was no greater than was essential for the furtherance of the governmental interest. The street closing was limited to a single street, the one adjacent to the Amphitheatre. It was in effect only during the time of convention sessions and two hours beforehand (in order to allow re-routing of traffic (R. 330-31)). At

all other times, the street was open for picketing. In fact, the record shows that the marchers did indeed picket on Halsted for a period of six hours prior to the time the street was closed at 10:00 a.m. in preparation for the noon session of the convention. In addition, picketing was permitted at other nearby places (R. 437). Indeed, the petitioners marched, protected and guided by police, from downtown unhindered all the way to the Amphitheatre (R. 453-54). Thus, except for a short length of Halsted Street during certain hours of the day, petitioners' freedom of expression was unlimited.

Petitioners' theory of the case is that because their picketing was in furtherance of expressing an idea, they were not required to heed the police order closing the street. Their theory is similar to one rejected by this Court in *Adderley* v. *Florida,* 385 U. S. 39 (1966). This Court rejected that theory, noting that it had "as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please" 385 U. S. at 47-48.

The street closing was valid; that the marchers were expressing their opinions did not exempt them from observing it.

II.

PETITIONERS' NON-VIOLENT REFUSAL TO OBEY THE VALID POLICE ORDER CONSTITUTED INTERFERENCE WITH THE DUTY OF THE POLICE.

The thrust of petitioners' second argument is that their refusal to leave when the street was closed did not constitute a "physical act or exertion." However, just because petitioners were not violent does not mean their conduct was not illegal. The fact that they were not dis-

orderly is not a defense where their demeanor is not an element of the offense. In the context of the offense with which they are charged, petitioners are mistaken in urging that in order to be convicted, their "physical" act must be a "disorderly" act.

Although respondent agrees that petitioners' continuing to march was not disorderly, petitioners were not charged with being disorderly. Their *refusal to leave* was a "physical act" sufficient to sustain their conviction. It was petitioners' physical presence that interfered with the police duty to close Halsted Street in preparation for the convention.

Such a conviction for non-violent interference with police duty is in accord with a case recently refused review in this Court, *People* v. *Meyer*, 44 Ill. 2d 1 (1969), *cert. den.* 397 U. S. 1024, *reh. den.* 398 U. S. 915. Meyer was charged, as were petitioners, with violating Section 11-33 of the Municipal Code, interfering with police. Meyer was delivering a street-corner speech to a crowd of 100 to 200 persons who became very agitated. His leaflets were burned, a sign was torn down, and a fight was about to ensue when police dispersed the crowd and ordered Meyer to move on. He refused and was convicted. His inert refusal to obey was a sufficient "physical act or exertion" to constitute interference with policy duty. He merely stood his ground in defiance of a valid order; in the present case, petitioners continued their marching in defiance of a valid order, interfering with the duty of the police to close the street.

The instant decision of the Illinois Supreme Court is not in conflict with such cases as *Cox* v. *Louisiana*, 379 U. S. 536, 559 (1965), *Edwards* v. *South Carolina*, 372 U. S. 229 (1963) or *Gregory* v. *Chicago*, 394 U. S. 111 (1969). The defendants in those cases were convicted of breaching

the peace or being disorderly, when in fact they were not. Petitioners here were not so charged. Although their interference was not accomplished in a violent manner, their refusal to heed the street closing was interference nonetheless.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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March 26, 1971.